

ORIGINAL  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202)424-7500  
FACSIMILE 0

NEW YORK OFFICE  
405 BRAXTON AVENUE  
NEW YORK, NY 10174  
EX PARTE OR LATE FILED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

William E. Kennard  
Chairman  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, DC 20554

RE: Ex Parte CC Docket No. 98-147

Dear Mr. Kennard:

New Edge Network, Inc., ("New Edge Networks") urges the Federal Communications Commission ("Commission") on reconsideration of the *Collocation Order*<sup>1</sup> to strengthen its collocation rules in the ways discussed below. New Edge Networks is in the process of building out networks that will enable it to provide DSL services in all fifty states. New Edge Networks will focus on provision of service in smaller markets outside of major metropolitan areas. In order to bring service to these areas as expeditiously as possible, New Edge Networks is currently obtaining state certification, securing interconnection agreements, ordering collocation and unbundled network elements, and purchasing and installing equipment throughout the country. New Edge Networks is currently certificated in thirty states, and has interconnection agreements in effect with various incumbent local exchange carriers ("ILECs") to provide service in twenty-four states.

New Edge Networks is experiencing significant delays in obtaining cost-based cageless collocation from ILECs. While the rules adopted in the Commission's *Collocation Order* established essential improvements in collocation provisioning, New Edge Network's recent experience reveals that the Commission's rules must be amended to ensure that the Commission's intent to hasten and

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<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), *recon pending* ("Collocation Order").

streamline the provisioning of collocation is more fully realized in practice. Specifically, New Edge Networks recommends that the rules be amended as follows:

- The Commission should establish maximum cageless collocation provisioning intervals applicable to the Regional Bell Operating Companies ("RBOCs"), GTE and the other incumbent local exchange carriers;
- The Commission should make enforcement of collocation intervals a priority for the newly formed Enforcement Bureau;
- The Commission should require ILECs to accept orders for, and provision, unbundled interoffice transport contemporaneous with provisioning collocation; and
- The Commission should establish default prices for collocation, based on total element long run incremental cost ("TELRIC") principles, applicable where states have not set such prices.

These recommendations and the reasons they are needed are discussed in greater detail below.

#### Cageless Collocation Intervals

As New Edge Networks starts to implement its business plan to provide advanced telecommunications services to smaller communities throughout the nation, the company has experienced lengthy delays in its ability to obtain cageless collocation. This lengthy delay is caused by the unreasonable timelines imposed by the ILECs for the preparation of price quotes and the construction of cageless collocation space.

The table below shows the various cageless collocation price quote and construction intervals imposed on New Edge Networks by ILECs. The information in Table is taken directly from interconnection agreements, ILEC collocation handbooks, or ILEC tariffs.

**TABLE**

<b>Company</b>	<b>Response/Quote Interval</b>	<b>Construction Interval</b>	<b>Total No. of Days</b>
US West	21 Days	45 Days	66 Days
SBC:			
SWBT - Texas	10 Days	55 Days	69 Days
SWBT - MOKA	49 Days	90 Days	139 Days
Ameritech	14 Days	90 Days	104 Days
Nevada Bell	35 Days	110 Days	145 Days
Pacific Bell	10 Days	110 Days	120 Days
SNET	42 Days	126 Days	168 Days
Bell South	45 Days	120 Days	165 Days
Bell Atlantic	21 Days	106 Days	127 Days
GTE	30 Days	90 Days	120 Days
Sprint	30 Days	90 Days	120 Days

The best provisioning times, in total number of days, are those offered by US West (66 days) and SWBT in Texas (69 days). The ILECs with the worst provisioning intervals include BellSouth and Southern New England Telephone ("SNET"). It takes SNET 168 days to provision cageless collocation space. BellSouth's provisioning interval for cageless collocation is a total of 165 days.

It is important to point out that the intervals in Table 1 represent each ILEC's best-case scenario. In these best-case scenarios, the total number of days is based on New Edge Networks submitting only one collocation application per state. Furthermore, a common area must already be constructed and power readily available. If best case conditions are not met, collocation provisioning intervals may be extended anywhere from 30 to 270 days.

These unreasonable collocation provisioning intervals are occurring under the Commission's current collocation rules. Delays of 6-12 months or more in obtaining cageless collocation space create a very significant detriment to competitive carriers, such as New Edge Networks, that face the scope and complexity of a nationwide rollout of DSL services. In addition, unanticipated delays in preparation of cageless collocation space add uncertainty to the market entry process and greatly increase the cost of entry in terms of both dollars and lost customers. The unpredictability of the delays and the substantially increased administrative and financial burdens associated with adjusting internal provisioning plans and customer orders for service substantially harm New Edge Networks. Meanwhile, the ILECs are able to plan and rollout DSL services in the same markets without incurring the same delays. Simply stated, unreasonable cageless collocation provisioning intervals

and costly delays hinder New Edge Network's ability to bring competitive DSL services to market in a timely manner.<sup>2</sup>

In the *Collocation Order*, the Commission expressly recognized that delays in receiving collocation space harm competition and that, more specifically, new entrants suffer significant competitive harm when they are forced to wait six to eight months to obtain collocation space.<sup>3</sup> The Commission should conclude on reconsideration that its current rules are not producing the intended effect of ensuring that collocation is provisioned within intervals that are compatible with the development of competition and should be strengthened.

New Edge Networks urges the Commission to adopt default collocation provisioning intervals. The Commission's default intervals would set the maximum time allowed for the completion of cageless collocation space by the ILECs. Timely provision of cageless collocation is an essential foundation for provision of competitive advanced services and adoption of default collocation intervals is an important step that the Commission could take at this time to accelerate the deployment of advanced services for the benefit of all consumers.

It is critical that the Commission establish intervals for the provisioning of cageless collocation that are significantly shorter than the typical intervals for the provisioning of caged collocation. Preparation of caged collocation space is inherently more time consuming than that required for cageless space. Caged collocation space requires the physical construction of a secure structure capable of providing a physical barrier against unauthorized intrusion. Cageless collocation, on the other hand, requires much less preparation time and no physical construction of a barrier. Unfortunately, a number of ILECs are utilizing cageless collocation intervals that are identical to caged collocation intervals. Other ILECs have shortened the cageless collocation interval only slightly. For example, PacBell currently requires 110 days for cageless collocation whereas it previously required 120 days for caged collocation.<sup>4</sup>

In the *Collocation Order*, the Commission encouraged state commissions to establish specific intervals within which ILECs must provide collocation.<sup>5</sup> Some states have already acted.

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<sup>2</sup> New Edge also notes that ILECs have strong incentives to delay new DSL providers' market entry. ILECs have nothing to gain from prompt provision of collocation space to competitors, as the Commission has recognized. Moreover, ILECs arguably have a greater incentive to delay carriers - like New Edge - that are focusing on markets outside of major metropolitan areas that ILECs will enter last.

<sup>3</sup> See *Collocation Order* at ¶ 54.

<sup>4</sup> See, e.g. Interconnection Agreement between PacBell and Focal, Section 2.2.1, dated June 15, 1998.

<sup>5</sup> *Collocation Order* at ¶ 54.

Most notably, the Public Service Commission of Utah and the Texas Public Utilities Commission have created detailed cageless collocation interval requirements. Utah's carrier-to-carrier quality of service rules require the ILEC to provide a written quotation within 25 days following receipt of a request, and complete construction of the collocation space within 45 days following acceptance of the price quote by the competitive provider.<sup>6</sup> Texas requires SWBT to provide a response to the collocater within 10 days of receipt of the application. The construction interval for SWBT in Texas is 55 days for cageless collocation where the collocater is installing all of its own bays.<sup>7</sup>

Most state commissions, however, have not addressed the lengthy cageless collocation provisioning intervals. New Edge Networks urges the Commission to promptly establish default collocation intervals applicable to all ILECs. The Commission should choose intervals based on the best practices of the ILECs. The Commission has used best practices benchmarking as a feasible and realistic way to set regulatory requirements applicable to ILECs.<sup>8</sup> ILECs for the most part have common networks and technologies. What is feasible for one ILEC is feasible for other ILECs. It is therefore reasonable to assume that all ILECs can meet reasonable collocation intervals employed by any one ILEC. Indeed, the Commission in the *Collocation Order* established a presumption that any collocation arrangement that one ILEC provides can reasonably be provided by all ILECs.<sup>9</sup> For this purpose, New Edge Networks urges the Commission to adopt default cageless collocation intervals based on best practices of the ILECs.

In the case of cageless collocation, the best price quote or response interval is 10 days. As noted, the Commission has already determined that 10 days is a reasonable period for initial order processing.<sup>10</sup> With respect to construction intervals, the best construction interval is 45 days offered

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<sup>6</sup> R746-365- (located at <http://www.psc.state.us/telecom/R365ns.htm>).

<sup>7</sup> Southwestern Bell Telephone Company, Texas, Local Access Service Tariff, Section 5, Sheet 13.3 and 13.9, Issued November 2, 1999, Effective October 29, 1999.

<sup>8</sup> See, e.g., *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279 at ¶ 111 (rel. October 8, 1999); see also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4784-85, at ¶ 42, n.100, n. 102 (1999) (noting U.S. WEST's provision of cageless collocation in contrast to the security concerns expressed by Bell Atlantic, SBC and GTE).

<sup>9</sup> *Collocation Order* at ¶ 45.

<sup>10</sup> *Collocation Order* at ¶ 55.

by US West. As discussed, there is no reason to expect that there are any local variations in ILECs' ability to provision cageless collocation space within the same intervals that US West employs.

### Enforcement Provisions

The Commission should also make enforcement of collocation intervals a priority for the newly formed Enforcement Bureau. Complaints regarding compliance with established provisioning intervals are suitable for review under the Commission's "Rocket Docket" procedures. The Commission should allocate sufficient resources to permit the timely review of collocation complaints. Adopting a policy of enforcing default collocation provisioning intervals will help ensure that ILECs make all commercially reasonable efforts to comply with the intervals that are adopted, and that ILECs are provisioning collocation space in a non-discriminatory manner.

To make the rules effective, the Commission should also establish penalties for violation of collocation provisioning intervals. Penalties could consist of the waiver of some, or all, non-recurring charges related to the provisioning of the collocation space. The penalties could be structured to increase in relation to the length of delay. In other words, the longer the delay, the greater the penalty. New Edge Networks believes that penalties are an efficient, effective and necessary measure to ensure ILEC compliance with provisioning intervals.

### Parallel Processing of UNEs

In cities that are served by multiple central offices, New Edge Networks typically places DSLAMs in each central office and interconnects those offices using unbundled dedicated interoffice transport.<sup>11</sup> When possible, New Edge Networks submits orders for unbundled dedicated interoffice transport prior to its DSLAMs being installed in the ILEC's central office. In this manner, New Edge Networks is able to install its equipment and obtain interoffice connectivity in the shortest timeframe possible with minimum downtime without unreasonable delays required with sequential processing of collocation and provision of UNEs. In order to accomplish this, New Edge Networks must be able to place service requests for unbundled dedicated interoffice transport prior to the DSLAM being installed.

To date, New Edge Networks has experienced numerous and significant delays with respect to obtaining unbundled dedicated interoffice transport. These delays are either caused by ILEC problems with its database and processes, or by the unavailability of interoffice facilities. New Edge Networks is currently working through the problems related to the ILEC's databases and processes. The Commission should address delays caused by unavailability of interoffice transport. How can a competitive DSL provider effectively plan its network deployment if it doesn't know if it will be able to get interoffice connectivity until its ready to install its DSLAM in a central office?

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<sup>11</sup> Because New Edge Networks is focusing on small and mid-sized cities, alternatives for interoffice transport are rarely available. As a result, New Edge Networks is dependent upon the ILEC for the provisioning of dedicated interoffice transport.

As an example, New Edge Networks was required by an ILEC to install its DSLAM prior to submitting orders for interoffice connectivity. Only after the DSLAM was installed and the order for interoffice facilities was submitted, did the ILEC inform New Edge Networks that there were no interoffice facilities available, and the next build to add capacity would not be finished for another six months. With no alternative provider in the area, the equipment is either stranded until the ILEC completes its construction of interoffice facilities or New Edge Networks must remove the equipment and comeback at a later date to install it a second time. Access to network information regarding the availability and status of interoffice facilities would have prepared New Edge Networks for the delay and it could have planned accordingly. Moreover, New Edge Networks believes that the entity providing DSL services for the ILEC does have access to network planning and capacity information and therefore does not encounter such problems.

New Edge Networks does not want a repeat of the no facilities experience and urges the Commission to broaden the current collocation rules. The rules should require that competitive DSL providers may submit orders for unbundled network elements, including unbundled dedicated interoffice transport, prior to having its collocated equipment fully installed. To address the long term problem of no facilities, the Commission should require the ILECs to provide network information disclosing the availability of interoffice facilities. These requirements would enable New Edge Networks to more efficiently manage its deployment of DSLAMs and bring advanced telecommunications services to market faster.

#### Default Pricing for Collocation

In the *Local Competition Order*, the Commission adopted a pricing methodology for UNEs based on calculating the total element long run incremental cost ("TELRIC").<sup>12</sup> The Commission also established proxy TELRIC UNE prices to govern prices for certain UNEs pending state implementation of TELRIC pricing for UNEs. New Edges urges that the Commission take the same approach and set default prices for cageless collocation.

The Commission recognized the need to establish a price setting methodology in the *Collocation Order*, but left this task to the states.<sup>13</sup> To date, many states have not acted. In fact, some states still permit the ILEC to provision cageless collocation on an individual case basis. As the Commission recognized in the *Expanded Interconnection Proceeding*, individual case based

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<sup>12</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 672-703 (rel. August 8, 1996).

<sup>13</sup> Price quoted to New Edge Networks from Southwestern Bell for a central office in Joplin Missouri.

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pricing does not provide adequate protection against anticompetitive pricing and discrimination.<sup>14</sup> If the Commission were to set default prices for the provisioning of cageless collocation based on the TELRIC standard, then CLECs would be ensured that collocation costs are both known and reasonable.

For the foregoing reasons, New Edge urges the Commission to strengthen its collocation rules as described above. These steps will help eliminate barriers to entry that are permitted under the Commission's current collocation rules.

Sincerely,



Patrick J. Donovan

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K Street, N.W. Suite 300  
Washington, D.C. 2000  
(202) 424-7857

Susan McAdams  
Vice President - Government  
& Industry Affairs  
Robert McMillin  
Director of Regulatory Affairs  
New Edge Networks, Inc.  
3000 Columbia House Blvd, Suite 106  
Vancouver, Washington 98661

cc: Commissioners  
Legal Assistants  
Larry Strickling  
Robert Atkinson  
Jared Carlson  
Carol Matthey  
Margaret Egler  
William Kehoe  
Julie Patterson  
Magalie Roman Salas

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<sup>14</sup> *Expanded Interconnection With Local Telephone Company Facilities*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-141, 7 FCC Rcd 7369, 7442 (1992).